United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1725.

459

No. 17, SPECIAL CALENDAR.

CHARLES E. GRANT, OTHERWISE CALLED EDWARD GRANT, APPELLANT,

vs.

UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED SEPTEMBER 19, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 3, 1906.

In the Court of Appeals of the District of Columbia.

No. 1725.

CHARLES E. GRANT, &c., Appellant,
vs.
UNITED STATES.

a Supreme Court of the District of Columbia.

No. 25020, Criminal.

UNITED STATES
vs.
CHARLES E. GRANT, Otherwise Called EDWARD GRANT.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Indictment.*

Filed in Open Court, Apr. 2, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term. January Term, A. D. 1906.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America in and for the District of Columbia aforesaid, upon their oath do present:

That one Charles E. Grant, otherwise called Edward Grant, late of the District aforesaid, on the sixteenth day of December in the year of our Lord, one thousand nine hundred and five, and at the District aforesaid, feloniously, wilfully and of his deliberate and premeditated malice contriving and intending to kill one Eva Barnes, in and upon the said Eva Barnes, in the peace of God and of the said United States, then and there being, feloniously, wilfully, purposely and of his deliberate and premeditated malice, did make an assault, and that he, the said Charles E. Grant, otherwise called Edward Grant, feloniously, wilfully and of his deliberate and premeditated malice, contriving and intending to kill the said Eva Barnes, with a certain knife then and

there in the right hand of him, the said Charles E. Grant, otherwise called Edward Grant, had and held, her, the said Eva Barnes in and upon the left side of her, the said Eva Barnes, then and there feloniously, wilfully, purposely and of his deliberate and premeditated malice did strike, cut, and penetrate, thereby giving to her, the said Eva Barnes, then and there with the knife aforesaid in and upon the left side of her, the said Eva Barnes, one mortal
2 wound; of which said mortal wound she, the said Eva Barnes, from the said sixteenth day of December, in the year of our Lord, one thousand nine hundred and five, to the twentieth day of January, in the year of our Lord, one thousand nine hundred and six, at the District aforesaid, did languish and languishing did live; on which said twentieth day of January in the year of our Lord, one thousand nine hundred and six, and at the District aforesaid, she, the said Eva Barnes, of the said mortal wound did die.

And the said Grand Jurors aforesaid, upon their oath aforesaid, do say that the said Charles E. Grant, otherwise called Edward Grant, her, the said Eva Barnes, in manner and form aforesaid, feloniously, wilfully, purposely and of his deliberate and premeditated malice, did kill and murder; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 25020. United States *vs.* Charles E. Grant, otherwise called Edward Grant. Murder, first degree. Wit-
3 nesses: Mrs. Harriet Barnes, Dr. L. W. Glazebrooke, George Brown, Bernard Noland, John Lee, Bertha Morten, Lizzie Hawkins. A true bill, Frank H. Thomas, Foreman.

Arraignment.

Supreme Court of the District of Columbia.

FRIDAY, *April* 6, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * * * *

No. 25020.

UNITED STATES
vs.
CHARLES E. GRANT, Otherwise Called EDWARD GRANT.

Indicted for Murder in the First Degree.

Come as well the Attorney of the United States as the defendant in proper person in custody of the Warden of the United States jail in and for the District of Columbia; and thereupon the defendant

being arraigned upon the indictment, pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

4 *Memorandum.*

April 26, 1906.—Jury sworn and respited until April 27, 1906.

Verdict.

Supreme Court of the District of Columbia.

FRIDAY, *April* 27, 1906.

The Court resumes its session pursuant to recess, Mr. Justice Gould presiding.

No. 25020.

UNITED STATES
vs.
CHARLES E. GRANT, alias EDWARD GRANT.

Indicted for Murder in the First Degree.

Come again the parties aforesaid in manner as aforesaid and the jury that was respited yesterday in custody as aforesaid; and thereupon, after hearing the evidence in full, the arguments of counsel and the charge of the Court, the jury retire to consider of their verdict, and returning into Court and being called and asked if they have agreed upon a verdict, the jury upon their oath say that the defendant is guilty of Murder in the first degree in manner and form as charged in the indictment herein; whereupon the defendant is remanded to Jail to await further action in this case.

5 *Sentence, Appeal, &c.*

Supreme Court of the District of Columbia.

FRIDAY, *May* 25, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * * * *

No. 25020.

UNITED STATES
vs.
CHARLES E. GRANT, alias EDWARD GRANT.

Convicted of Murder in the First Degree.

Come as well the Attorney of the United States as the defendant, in proper person, in custody of the Warden of the United States

Jail in and for the District of Columbia, and by his Attorneys James A. O'Shea and Henry I. Quinn, Esquires, and, thereupon, the defendant's motion for a new trial coming on to be heard and being argued by counsel, it is considered by the Court that said motion be, and the same hereby is, overruled; whereupon the Attorney of the United States moves the Court to pronounce the sentence of the law in this case; whereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing, except as he has already said; and, thereupon it is considered by the Court that for
his said offense the said defendant be taken by the Warden
6 aforesaid to said Jail whence he came and there to be kept
in close confinement, and that on Tuesday, the thirtieth (30th) day of October, A. D. 1906, he be taken to the place prepared for his execution within the walls of the said Jail and then and there between the hours of six (6) o'clock ante-meridian and twelve (12) o'clock meridian of the same day he, the said defendant, be hanged by the neck until he be dead; and may God have mercy on his soul; whereupon the Attorneys for the defendant note an appeal to the Court of Appeals of the District of Columbia from the judgment of the Court in this case; and, thereupon, the Attorney of the United States in open Court waives the issuance of a writ of citation; whereupon on motion of the Attorneys for the defendant it is ordered by the Court that said defendant be not required to furnish a bond for costs on his said appeal and that the Clerk of this Court prepare a transcript of the record without cost to said defendant.

Memoranda.

July 10, 1906.—Time to submit and settle bill of exceptions and to file transcript of record in Court of Appeals of the District of Columbia, extended to and including July 17th, 1906.

July 17, 1906.—Time to submit and settle bill of exceptions and to file transcript of record in Court of Appeals of the District of Columbia further extended to and including August 17th, 1906.

7 *Bill of Exceptions Made Part of Record.*

Supreme Court of the District of Columbia.

TUESDAY, *July* 31, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

No. 25020.

UNITED STATES
vs.
CHARLES E. GRANT, alias EDWARD GRANT.

Convicted of Murder in the 1st Degree.

Now comes here the defendant by his Attorney James O. O'Shea, Esquire, and tenders to the Court his bill of exceptions taken during

the trial of this case and prays that it may be duly signed, sealed and made part of the record, now for then, which is done accordingly.

8 *Bill of Exceptions.*

Filed July 31, 1906.

In the Supreme Court of the District of Columbia.

Criminal No. 25020.

THE UNITED STATES OF AMERICA
vs.
CHARLES EDWARD GRANT.

This cause having come on for trial before the Honorable Ashley M. Gould, Associate Justice of the Supreme Court of the District of Columbia, and a jury.

The United States being represented by Messrs. Charles H. Turner and Harvey Givens, and the defendant by James A. O'Shea and Henry I. Quinn, the following proceedings were had.

The United States to maintain the issues on its part joined called one FLORENCE ANDERSON, who testified substantially as follows:—That she lived at 1205 Blagden's Court; that she knew Eddie Grant; that he and Eva Barnes, the deceased, were in her house on the night of December 16th, 1906; that one Willie Crew was with them; that Eva Barnes had a knife; that the defendant took the knife from her.

Thereupon witness identified knife exhibited to her by the District Attorney.

Cross-examination:

That the deceased had sent for the defendant on that night; that they left her house about 11.40 P. M.; that Grant used to
9 have fusses and fights sometimes with the deceased, and then again was all right; that witness never saw him violent towards deceased; that she had frequently seen deceased strike defendant.

The Government to further maintain the issues on its part joined called one WILLIAM ANDERSON, who testified substantially as follows:—That he was in the Barnes house on the night of December 16th; that he had a knife paring his nails, which the deceased took from him.

Thereupon witness identified the same knife shown last witness.

Cross-examination:

That deceased said she wanted the knife to rip her dress, and would not give it back to him; that the defendant told the deceased to give back the knife to the witness; that aside from the little dispute over the knife, deceased and defendant seemed pretty friendly whil witness was there.

And the Government to further maintain the issues on its part joined called one WILLIAM CREW, who testified substantially that he knew the defendant and the deceased; and that he was at Florence Anderson's house on the night of December 16th; that a little fuss was started between deceased and defendant all of a sudden and Grant said "I will cut hell out of you," (talking to Eva); and he had a little pen-knife which was open, in his hand, which I took from him and gave to Eva, and she put it in her stocking; that witness did not see anything of any other knife while he was there. "Witness could not identify the knife the Government exhibited to him."

Cross-examination:

That witness got out of the penitentiary in 1902, where he had been sent for two years for housebreaking.

And the Government to further maintain the issues on its part joined called one ELIZABETH CAMPBELL, who testified substantially as follows:—That she lived at 1205 Blagden's Alley; that she told Eva Barnes and the defendant to get out of her house that night because Grant was under her bed asleep. Thereupon the following took place:

Q. Did you know Eva pretty well? A. Yes, sir. I have known Eva from a little girl.

Q. I don't know whether this will be objected to, but I am going to ask what sort of a reputation did Eva have in that alley?

Mr. TURNER: I object.

Mr. O'SHEA:

Q. I will put the preliminary question. Did you know other people in the alley who knew Eva?

The COURT: You need not go any further. I will sustain the objection.

Mr. O'SHEA: Your Honor, will allow us an exception.

The COURT: In the first place it would not be proper cross examination.

Mr. O'SHEA: That is all we want to ask.

The said exception was spread upon the minutes of the Court.

Thereupon the witness stood aside.

And the Government to further maintain the issues on its part joined called one BERNARD NOLAN, who testified that he lived in Blagden's Alley; that he had been at McNerney's bar room on the night of December 16th; that he got into Blagden's Alley just before 12.00 midnight; that he met deceased and defendant coming out of Florence Anderson's house; that deceased called to him; that he did not go to deceased, but she came to him and left defendant standing nearby; that defendant called to deceased "She had better come;" that he had a knife, it looked to me like; that it was in his right hand; that the blade had a shape like a boat; that witness would not swear; knife already identified (by previous witness, p. 60) was

what defendant had in his hand, but it looked like that; that a man named Brown, and one named Lee was with him on this occasion; that deceased went back to defendant after he had told her she had better come; that witness, Lee and Brown then went on up the alley to their houses; that witness and Lee lived two doors from deceased: the following took place:

By Mr. TURNER:

Q. After you got into your house, you and Lee, did anything else happen? A. No, sir, no more than I——

Mr. O'SHEA: I object.

Mr. TURNER: What is the objection?

Mr. O'SHEA: The objection is, if the witness is going to state that he heard anything, I object to it.

The COURT: What is the objection?

12 Mr. O'SHEA: The objection is this. As I understand him, he was inside the house, and it will probably appear that the Government is going to try to show that he heard this girl cry out or something of that sort. I do not think he is in a position to testify to that.

The COURT: He is now asked if he heard anything.

Mr. O'SHEA: The question was what happened next, if I remember rightly.

The COURT: The same thing.

Mr. O'SHEA: And I want to get the objection in in time.

The COURT: Do you mean to say that a man inside a house cannot testify to anything he heard outside?

Mr. O'SHEA: Not unless they can show that he can identify the voice.

The COURT: That is all to come later. It is for the witness to furnish such information as he can on the point. You may cross-examine, to determine the accuracy of his statement. It goes to the jury as a fact. Whether he can identify the voice is a question of fact for the jury.

Mr. O'SHEA: I will save my point.

The COURT: Go ahead.

By Mr. TURNER:

Q. Did you see or hear anything unusual? A. No.

And the Government to further maintain the issues on its part joined re-called one Dr. LARKIN W. GLAZEBROOK, who testified
13 substantially: that he performed an autopsy on the body of the deceased; that deceased died from blood poisoning from an infected wound of the breast.

And the Government to further maintain the issues on its part joined called one Dr. C. F. WARNER, who testified that he had received the deceased at the Homeopathic Hospital on the night of December 16th, and treated her; that she was suffering from a stab wound of the left breast; that she died of blood poisoning or septic infection from that wound; that he helped undress her, and no knife was taken from her stocking.

And the Government to further maintain the issues on its part joined called one GEORGE BROWN, who testified that he lived in Blagden's Alley; that he was with Lee & Nolan on the night of December 16th in the alley; that they met Eva and the defendant in the alley on that night; that he (witness) had been drinking. Witness described the alley & said that there was a Jew store about fifty or sixty feet from the Barnes' house.

And the Government to further maintain the issues on its part joined called one JOHN LEE, who testified substantially as follows:— That he lived with Bernard Nolan, whom he met at McNerney's bar room on the night of December 16th in company with Brown; that they went into Blagden's Alley from 9th street side; that he knew both Eva Barnes and Eddie Grant; that they were coming out of 1205 Blagden's Alley; that the defendant hollered to deceased, who stopped to talk to Nolan, "you had better come on;" that defendant and Eva afterwards stopped. That witness and Nolan went into the house where witness and Nolan lived, and the following took place:

14 By Mr. TURNER:

Q. What did you hear?

Mr. O'SHEA: We object.
Mr. TURNER: It has been passed upon once.
The COURT: Yes, the objection is overruled.
Mr. O'SHEA: We note an exception.
Said exception was spread upon the minutes of the Court.
And the following occurred after the said exception was noted.

By Mr. TURNER:

Q. What did you hear? A. Just as I got inside, I was in there long enough to get off my necktie and collar and top shirt, and I heard somebody knock or rap, push against the door, and holler at the door; "Oh, mama, mama, I am cut to death; Eddie has cut me to death."

Q. Could you recognize the voice? A. Yes, sir; I run to the door.

Q. Who was it you saw there? A. Eva—Eva at the door.

Q. Now, at what door was she, at your door, or at her mother's? A. No, sir; at her mother's door.

Q. And that is just separated by a little cook-shop from your door? A. Yes, sir.

Q. Was she bleeding or not? A. I didn't see her bleeding until I put on my top shirt and run in there; then she was bleeding.

15 Q. Where was she bleeding; from what part of her body? A. Right from her bosom, there, around the heart somewhere.

Q. She said "oh, mama, mama, I am cut; Eddie has cut me to death?" A. Yes, sir.

And the Government to further maintain the issues on its part joined called one ELIZABETH HAWKINS, who testified that she knew defendant for six or seven years; that she had seen defendant beat and kick deceased many times; that she saw defendant cut deceased in the mouth with knife once; that she had seen deceased the night she was cut talking to Nolan; that her house is the first beyond the cook-shop towards N Street; that she has been in her house about five minutes when she heard a terrible loud squeal from some person, and she looked out the window and saw defendant running by the alley towards M Street.

Cross-examination:

That she could not remember whether defendant had on a hat; that she could not tell the kind of clothes he had on; that he was going so fast she did not know what he had on.

And the Government to further maintain the issues on its part joined called one HARRIET BARNES, who testified that Eva was her adopted daughter; that she remembers the night that Eva was cut and sent to the hospital; that in consequence of what Eva
16 told her, she searched and found a knife right at the Jew's steps. Witness would not swear positively that the knife exhibited to her was the knife. (This knife was the one shown to previous witnesses.)

And the Government to further maintain the issues on its part joined called one MARY BARNES who testified that defendant treated Eva badly; that witness had seen defendant beat Eva more than once. That during the past winter witness heard defendant tell Eva that if he caught her with another man outside himself he would kill her. That on the night Eva was taken to the hospital she was with her mother when the knife was picked up in front of the Jew's steps. Witness identified knife exhibited to her, which was the same knife exhibited to previous witnesses.

And the Government thereupon offered in evidence the knife, which was objected to by the defence on the ground that it had not been sufficiently identified. And the following took place.

Mr. O'SHEA: Well, I object, your Honor; I do not think it has been sufficiently identified yet. This Barnes woman, the mother, did not identify it; she did not attempt to identify it.

The COURT: Oh, yes, she did. She said it looked like the knife she found.

Mr. TURNER: She said it looked like it; but would not swear to it.

The COURT: It is a knife found within a very short distance of the scene of the homicide, covered with blood; and it is for the jury to say, on this testimony, whether it is the identical knife
17 with which the deed was done. I will admit it in evidence.

Mr. O'SHEA: We save an exception on that point.

Said exception was spread upon the minutes of the Court.

And the Government to further maintain the issues on its part joined called one GEORGIANA BARNES, who testified substantially that Eva was her adopted sister; that she knew Eddie Grant; that he had treated her like a dog.

Cross-examination:

That she had only seen him beat her once.

And the Government to further maintain the issues on its part joined called one SARAH SEIFUS, who testified substantially that she had seen defendant and deceased together; that on the Thursday preceding the homicide she had heard the deceased say to defendant, "don't kill me," and defendant say, "I am going to kill you, it won't be long before I do, and when I do cut you up I will cut you for fair," that she had heard defendant threaten deceased at other times.

Cross-examination:

That on the Thursday referred to she had seen him wave something in his hand, but did not know what it was; that she had talked with the mother of the Barnes girl the next day.

And the Government to further maintain the issues on its part joined called one ALBERTA BARNES, who testified substantially
18 that she had known Eva and Eddie; that she had heard him threaten her. That about 4 or 5 months before the killing defendant came to the house where witness and Eva were sleeping at about two o'clock in the night, and got in the window, witness and Eva were in bed and defendant had a long knife sticking up at his side; he called Eva across the bed and he was going to stab her with the knife, he said he was going to kill her with the knife.

Cross-examination:

That defendant on the morning in question came from the downstairs part and came in and stayed out on the back part until late and then he climbed on the fence and got up on the shed.

And the Government to further maintain the issues on its part joined called one JAMES P. HENDRICKS, who testified substantially that he was a member of the Metropolitan Police Force, and that on the night of December 16th he was given a blood-stained knife in Blagden's Alley, by Mary Barnes, and identified knife.

And the Government to further maintain the issues on its part joined called one WM. B. MULHALL, who testified that he arrested Eddie Grant on the night of December 16th; that he asked Eddie "what did you cut Eva for," and Eddie said, "Mr. Mulhall, she stuck a hat pin in me."

And the Government to further maintain the issues on its part joined called one WINBURN C. ADCOCK, who testified that he was a member of the Metropolitan Police Force, and went with
19 Mulhall to arrest Eddie Grant, that Eddie told him the same as he told Officer Mulhall.

And the Government to further maintain the issues on its part joined called one JOHN H. GIBSON, a member of the Metropolitan Police Force, who testified that while taking the defendant from the Coroner's inquest to the jail, defendant said that deceased had got hold of his privates and he had to stab her to make her let go.

And thereupon the Government rested.

And the defense to further maintain the issues on its part joined called one WILLIAM STEPHENSON, who testified that he knew defendant; that his reputation was good, as far as he knew.

And the defense to further maintain the issues on its part joined called one FRED HATTON, who testified that he knew the defendant; that his reputation was good.

Cross-examination.

By Mr. TURNER:

Q. And you have heard people say that he didn't treat Eva right, hav-n't you?

Mr. O'SHEA: We object. I don't think the witness said that at all.

Mr. TURNER: I do not mean to state that he has ever said that, but I ask him.

Mr. O'SHEA: We object to the asking of it.

The COURT: He has a right to interrogate him as to his witness's knowledge of what he has done, and his past life.

Mr. O'SHEA: In connection with Eva Barnes.

The COURT: Why, certainly, or in connection with any other person. A man's reputation is made up of his single acts.

Mr. O'SHEA: We understand that, but we did not go into that on the direct.

The COURT: Where a man testifies as to the good reputation of the defendant, it is within the power of the Government to determine upon what he found his opinion, and that can only be done by asking specific questions.

Mr. O'SHEA: Your honor will allow us an exception.

The COURT: Yes.

Said exception was spread upon the mintes of the Court. After the exception was noted the witness said he had never heard of beating Eva or going into Eva's room.

And the defense to further maintain the issues on its part joined called one E. T. TOLLIVER, who testified that the reputation of the defendant was good.

And the defense to further maintain the issues on its part joined called one VINA GRANT, who testified that she was the mother of the defendant, that on the Thursday night preceding the 16th of December; the defendant was in the house all night; that witness placed the night because her two daughters went to the theater; that witness had seen Eddie with Eva Barnes; that in her presence they

seemed to get along very well as far as she knew; very friendly together in her presence; that she never heard them quarrel
21 that she never heard defendant threaten her; that she never heard him say that he would take her life.

Cross-examination.

That the following then occurred:

By Mr. TURNER:

Q. That evening when you called around there at Mrs. Barrnes' house, did you not say in the hearing of Miss Georgiana Barnes, that you were not responsible for what Eddie did, but you were thankful that Eddie did not kill her in your home, that you had long tried to keep him from killing her? A. There was not anything passed——

Q. That you had long tried to prevent that. Didn't you say that?

Mr. O'SHEA: That is objected to. I do not think it has anything at all to do with this case. I think it is immaterial and irrelevant.

The COURT: It is in a sense contradictory of her statement that their relations were friendly. So much of the question as asked if she did not state on that occasion in the presence of Georgiana Barnes that she had long tried to prevent the defendant killing this girl, I think is admissible, as laying the foundation for contradiction of her statement as to the pleasant relations that existed between them. For that purpose, and that alone, I will admit it.

Mr. O'SHEA: I still renew my objection and ask an exception.

Mr. TURNEY: Shall I re-form the question?

22 Mr. O'SHEA: The District Attorney now proposes to segregate this question and take just *w*hat portion which refers to the killing.

The COURT: No, he takes that portion, as I understand it, in which it is stated that this witness had expressed the opinion at that time—I do not remember the exact form of the question—that this woman had stated that she had tried to keep Eddie from killing this girl. Is that the substance of it?

Mr. TURNER: Yes. I think I can point out to the Court that the whole matter is strictly relevant.

Mr. O'SHEA: Of course, my objection goes to all this.

The COURT: All what?

Mr. O'SHEA: These remarks of the District Attorney.

The COURT: Do you object to *t*his arguing the question?

Mr. O'SHEA: No, but I thought the court had passed upon it.

The COURT: No, I am listening to further instruction from counsel.

Mr. TURNER: We will offer to prove that this witness went around there and inquired whether Eva was dead. She said that she hoped they did not blame her or hold her responsible, that she was very glad that Eva had not been killed in her house. Of course, that by itself would not rebut anything she said, but she went on and said "I have all along tried to prevent Eddie from doing that in

my house." Now she had testified on the direct examination
23 that she had seen Eddie and Eva together very frequently, and that their relations were always pleasant and friendly and harmonious, and I offer to prove, and I ask her in order to lay the foundation for it, if she did not say then that she had for a long time tried to prevent the killing of this girl in her house, and at the time that she heard the rumor of her death, expressed her gratification that the killing had not taken place under her roof. Now, it seems to me it does not need any argument to point that out if a person expresses gratification that a killing has not taken place there, that it means that that person for years has had an apprehension of that killing there, and then when that same person attempts to say that the relations of the parties to the tragedy had always been pleasant and friendly and amicable, it is the strongest sort of rebuttal to prove that she goes to the very family of the murdered girl, the very hour of her death, and says, "I have been under apprehension for years that this dreadful murder would take place by my hearthside."

The COURT: I will admit so much of that question as laying the foundation for contradiction, as I have indicated the last part of it.

Mr. O'SHEA: I will renew my objection and exception.

The COURT: You may take an exception.

Said exception was spread upon the minutes of the Court. And the witness after the noting of the exception, denied having made the statement.

And the defense to further maintain the issues on its part
24 joined, called one LAURA GRANT and one BERTHA KAISER, who testified substantially that on Thursday, the 14th of December the defendant was at home when they left around 7.00 P. M.; that they went to the Academy of Music; that when they returned about 10 or 11 o'clock defendant was in the house.

And the defense to further maintain the issues on its part joined called one EDDIE GRANT, the defendant, who testified substantially that on the night of December 16th he had been sent for by the deceased; that they left the Anderson house; that they walked up the alley to a lamp-post; that defendant had some words with deceased about being in a hurry to get home; that deceased struck him on the nose; that he pushed her from him; that she then grabbed him in the privates, and he took the knife which she had had early in the evening and stabbed her, as he thought, in the arm; that he then threw the knife down, and ran out of the alley; that he was arrested later in the evening; that he had been in the workhouse four times, twice for 15 days, and twice for 30 days; that the Thursday preceding the stabbing he was home all night; that he does not remember telling Officer Adcock that the deceased stuck him with a hat pin; that he may have said that, but does not remember.

Cross-examination:

That he had never cut deceased in the mouth or on the hip; that he had never kicked her; never threatened her; but had struck her *on* several times.

25 And thereupon the defendant rested.

Rebuttal.

And the Government to further maintain the issues on its part joined called in rebuttal one GEORGIANA BARNES, who testified as follows:—That she saw Mrs. Grant on the night that Eva died around at Eva's mother's house; that the following then occurred:

By Mr. TURNER:

Q. Did she say, "I hope you have no hard feelings against me, as I have tried for a long time to prevent Eddie from doing this in my house."

Mr. O'SHEA: We renew the objection that we argued when this question was put to Mrs. Grant.

The COURT: The same ruling and same exception.

To which ruling, the defense, by his counsel, then and there excepted, and said exception was spread upon the minutes of the Court.

After the noting of the exception:

Q. Did she say that? A. Yes.

The foregoing is the substance of all the testimony given at the trial.

Thereupon the United States offered the following prayer for instruction to the jury:—

1. If the jury find from the evidence that the defendant had formed a purpose to kill the deceased if a certain event hap-
26 pened, and on the happening of that event he put his previously formed purpose into execution, then the crime is murder in the first degree, even though they do not find that the purpose to kill existed continuously from the time of its formation until its execution, unless they also find that before the killing he had abandoned such purpose.

(Granted.)

Counsel for the defendant objected to the prayer on the ground that there was no evidence in the case to warrant such instruction. But the court overruled said objection and counsel for the defendant excepted.

Thereupon the defendant then offered the following prayers:

Defendant's Prayers.

I.

Murder so defined in the law, is the wilful killing of a human being, with malice aforethought either expressed or implied; and in order to convice the defendant of murder in the first degree you must be satisfied beyond a reasonable doubt that he with malice aforethought and premeditation did wilfully murder and kill the deceased in the manner set forth in the indictment.

(Granted.)

II.

The jury are instructed that the presumption of innocence attends the defendant in this case throughout every stage of
27 the trial until that presumption is overcome by proof that satisfies the minds of the jurors beyond a reasonable doubt that he is guilty of the crime charged. This presumption is not overcome by a mere preponderance of the evidence, but it stands as a shield of the accused throughout every stage of the trial until overcome by proof of his guilt beyond a reasonable doubt. And by the term "reasonable doubt" the law means that the evidence of his guilt as charged must be clear, positive and abiding, fully satisfying the minds and consciences of the jury. It is not sufficient to justify a verdict of guilty that there may be a strong suspicion, or even strong probability of guilt, but the evidence must establish the fact of guilt to a moral certainty, and must preclude every reasonable hypothesis, except that of the guilt of the defendant.

(Granted.)

III.

The jury are instructed that the defendant is presumed to be innocent until his guilt is established by such evidence as will exclude every reasonable doubt; and the law therefore requires that no person shall be convicted of a crime until each and every jury man is satisfied by the evidence in the case, to the exclusion of every reasonable doubt, that the defendant is guilty in manner and form as charged in the indictment.

(Granted.)

IV.

The Court instructs the jury that under the law no person
28 should be convicted of a crime upon a mere suspicion, however strong, or simply because there is a mere preponderance of all the evidence in the case against such person; or simply because there is a probability of his guilt; or a strong reason to suspect that he is guilty; but before the jury can lawfully convict, they must be convinced of the defendant's guilt beyond a reasonable doubt.

(Granted.)

V.

The jury are further instructed that in order to convict the defendant of murder it is not enough to simply prove that the deceased came to her death by a knife thrust as a result of a knife held in the hand of the defendant; and you must be satisfied from the evidence that the fatal thrust which caused the death of the deceased was given by the defendant intentionally to take human life.

(Granted.)

VI.

If a jury believe that the accused at the time he drew the knife, had, in good faith, a reasonable belief founded upon the facts as they appeared to him at that time that he was in imminent peril of his life or in danger of great bodily harm at the hands of the de-

ceased, from which he could not reasonably save himself except by the use of the force he did use, then his act is justifiable, even if his belief was a mistaken one, and the verdict of the jury should be one of acquittal.

(Rejected.)

29

VII.

The jury are instructed that in order to constitute murder in the first degree the Government must satisfy you beyond a reasonable doubt that the act was committed with malice; that the intent must have been deliberately formed and carried into effect, in other words that the act must have been wilful, deliberate and with premeditated malice.

(Granted.)

VIII.

The jury are instructed that the character of the instrument used in the killing, the way the defendant got it and the fact, if they do find it to be a fact, that the defendant was sent for by the deceased are all material as bearing upon the question of whether deliberation and premeditation existed.

(Granted.)

IX.

If the jury find that the killing was done intentionally in a sudden passion, engendered by provocation, but that the provocation was not of that character which the law regards as sufficient to reduce the crime from murder in the first degree to manslaughter, the crime can only be second degree murder.

(Granted.)

X.

The jury are instructed that premeditation and deliberation are not presumed from the mere fact that the killing was in-
30 tentional or that a deadly weapon was used; but they must be satisfied beyond a reasonable doubt by the evidence itself that the defendant did wilfully, and with malice aforethought determine to kill the deceased, Eva Barnes.

(Granted.)

XI.

In considering the weight and credibility to be given to the witnesses, their bearing upon the stand, their demeanor, the circumstances under which they testified, and the extent to which each statement may be influenced by bias, prejudice or feeling should all be considered by the jury.

(Granted.)

XII.

The jury are instructed that they should consider carefully the whole of the testimony and that if upon the whole evidence the minds of the jury are in a state of reasonable doubt and uncertainty

so that they cannot reasonably say the defendant is guilty, they must acquit.

(Refused.)

XIII.

The jury are instructed that if they entertain a reasonable doubt as to whether premeditation and deliberation existed, or in other words, if they are in a reasonable doubt as to the degree of
31 the murder of the facts of the case, then the benefit of the doubt must be given to the accused by returning a verdict of the lower degree.

(Granted.)

XIV.

The jury are instructed that in considering the weight to be given to the alleged threats they should take into consideration the circumstances under which the alleged threats were made, the time intervening between them and the killing, and the opportunities, if there were any, which the defendant had for carrying the alleged threats into effect, prior to the killing.

(Granted.)

XV.

The jury are instructed that in considering the weight to be given to the alleged threats, they are to consider the spirit in which they were given, whether they were used as mere empty words or in a jesting manner, or whether they were given with animus.

(Refused.)

XVI.

And you are further instructed that if you believe from the evidence that the defendant and the deceased, after Lee, Brown and Noland had gone to their homes, had a quarrel; and if you find further that the deceased struck Grant in the nose or mouth and that the defendant pushed her away and that she then grabbed
32 him in his private parts, and that he while being so held, and suffering great and untold pain, and acting under the extreme provocation, reached and got the knife which he had taken away from the deceased earlier in the evening and stabbed her, all the while acting under sudden and uncontrolled passion, pain and torture, then you should not find him guilty of murder.

(Refused.)

XVII.

In determining as to whether or not the defendant acted with premeditation and deliberation and with malice aforethought on the night of December the 16th, 1906, when Eva Barnes was stabbed, they should consider the fact that the deceased sent Florence Anderson after the defendant, that he came to see her at her request and that the knife with which the stabbing was alleged to have been committed was not his knife.

(Refused.)

Thereupon counsel for the defendant severally noted exceptions to the refusal of prayers 6, 12, 14, 15, 16 and 17.

33 After Recess.

Charge to the Jury.

The COURT: GENTLEMEN OF THE JURY: The defendant, Charles E. Grant, is indicted by the grand jury for the murder of one Eva Barnes, by stabbing her with a knife on the 16th day of December, 1905, as a result of which stabbing she died on the 13th day of the following January.

The indictment, as I have stated, is for murder, and murder in the first degree.

In this jurisdiction, the crime of homicide is divided into different degrees. For the purposes of this case, it is necessary for me to define to you what those degrees are, because, under this indictment, although it is drawn to carry murder in the first degree, it is possible for you to return a verdict of guilty of a lesser degree of homicide than that which is defined as first degree murder.

Murder in the first degree consists in the unlawful killing of one human being by another with deliberate and premeditated malice.

Murder in the second degree consists in the same killing of one human being by another with malice aforethought. You will notice the difference between the two degrees consists in the fact that to constitute murder in the first degree the malice, which is an ingredient of both degrees, must be deliberate and premeditated.

34 In this case, in order to convict the defendant of murder in the first degree, it is necessary for you to find from the testimony that he deliberated and premeditated before he struck the blow which caused the death of the deceased, Eva Barnes.

Now it is hardly necessary for me to define to you what premeditation and deliberation mean. They are words of common usage, the meaning of which is familiar to all intelligent jurors. By "premeditated" is meant to think of before the act. By "deliberate" it means to weigh for some moment of time before acting, and as applied to this degree of the crime of homicide, it means that, for some appreciable period of time before striking the fatal blow, the de*ceased* did premeditate and deliberate before the act that he was about to commit.

Now, the law does not undertake to define the length of time during which a defendant shall deliberate and premeditate in order to constitute that element of the crime of murder in the first degree. It would be manifestly impossible to lay down a rule which would cover all cases.

So that, in this case, as I have said, if for any appreciable interval, during which the human mind could operate and deliberate and premeditate, this defendant did so deliberate and premeditate as to the act, then he would be guilty of murder in the first degree.

Murder in the second degree, as I have said, is the unlawful killing, without deliberation or premeditation, but with malice.

35 Now "malice," in the ordinary acceptation of the term, as we use it colloquially, means hatred or ill-will towards another. It has that meaning, but it has also a broader meaning, and includes

that condition of the mind or heart which prompts a man to a conscious violation of the law. In other words, malice, in legal acceptation, is the mental condition of a man which prompts him to commit violation of the law, or to impinge upon the right of another to such an extent as to constitute a violation of the criminal law. In other words, it is a condition of the heart rather than the hatred or ill-will towards an individual. If you find that, without premeditation and deliberation, but with malice in his heart, he struck the fatal blow, then he would be guilty of murder in the second degree.

Now the question comes from what shall you gather the conclusion as to whether, in the first place, deliberation and premeditation existed, and, second, whether, if they did not exist, whether malice existed in this defendant's heart at the time he struck the fatal blow.

So that, when you sum up all the testimony in this case, if you believe from the testimony that previous quarrels, threats, assaults, had been committed by the defendant upon the deceased, then you have a right to take those into consideration in determining whether he acted with deliberate and premeditated malice, and also as to whether he had malice in his heart, even though it were not deliberate and premeditated.

On the question of malice you have a right to take into
36 consideration the character of the weapon used and the manner in which he used it. Whether or not it was his weapon is also a matter for your consideration upon that question. Whether he had it with the intention of using it when he got it is a matter also to be weighed by you.

In other words, to determine this question of premeditation and deliberation, you are to take into consideration the relations that existed between these parties, not only on the evening of the tragedy, but for some time, as disclosed in the evidence, prior to it.

Now, then, the principle of criminal law applicable to this, as to all cases of a like nature, is that each defendant is presumed to be innocent until his guilt is proven beyond a reasonable doubt. This applies not only to the general question of his guilt, but also to each degree of the crime with which he is charged. For example, if you have a reasonable doubt as to whether he premeditated and deliberated in the manner that I have defined it, you will give him the benefit of that doubt. If you have a reasonable doubt as to whether he had malice in his heart he would be entitled to the benefit of that doubt.

Now, a "reasonable doubt" is a term often used, probably better understood than defined. It is not a mere possible doubt, because everything relating to human affairs and depending upon evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves your mind as jurors in that condition
37 that you can say you feel an abiding conviction to a moral certainty of the truth of the charge against the defendant.

So that if, in this case, after you have summed up all the testimony, you can say you are satisfied to a moral certainty of the guilt of the defendant of any one of the several degrees of homicide which

come within the scope of this indictment, then you may be said to have no reasonable doubt.

The defendant has asked a number of instructions here, many of which are embodied in the law as I have laid it down. The presumption of innocence, which I have spoken of, attends the defendant throughout the trial, and is only removed by testimony that satisfies your mind, beyond a reasonable doubt, which I have defined.

I give you this instruction on behalf of the defendant:

"That in order to convict the defendant of murder it is not enough to simply prove that the deceased came to her death by a knife thrust as a result of a knife held in the hand of the defendant. You must be satisfied from the evidence that the fatal thrust which caused the death of the deceased was given by the defendant intentionally for the purpose of taking human life."

But I also instruct you in that connection that you can infer the intent from the relationship, from what has been shown, if you believe that they have been established beyond a reasonable doubt, as to the threats that have been made, and also from the character of the weapon used and in the manner in which it was used.

I further instruct you that the character of the instrument
38 used in the killing, the way the defendant got it, and the fact, if you find it to be a fact, that the defendant was sent for by the deceased, are all material as bearing upon the question of whether deliberation or premeditation existed," and you should take those into consideration with all the other testimony bearing upon that point.

"If you find that the killing was done intentionally, in a sudden passion en*dang*ered by provocation, but the provocation was not of that character which the law regards as sufficient to reduce the crime from murder in the first degree to manslaughter, the crime can only be second degree murder."

You are further "instructed that premeditation and deliberation are not presumed from the mere fact that the killing was intentional or that a deadly weapon was used; but you must be satisfied beyond a reasonable doubt by the evidence itself that the defendant did wilfully and with malice aforethought determine to kill the deceased, Eva Barnes."

"In considering the weight and credibility to be given to the witnesses, their bearing upon the stand, their demeanor, the circumstances under which they testified, and the extent to which each statement may be influenced by bias, prejudice or feeling, should all be considered by the jury."

"The jury are instructed that, in considering the weight to be given to the alleged threats, they should take into consideration the circumstances under which the alleged threats were made, the
39 time intervening between them and the killing, and the opportunities, if there were any, which the defendant had for carrying the alleged threats into effect prior to the killing."

I also instruct you in that connection that, if you believe from the testimony that these threats were made as contended by the Government, but that subsequently the parties became reconciled, that then

the prior threats would have no bearing upon the subsequent act of the defendant, unless under a certain contingency, which I will give you later in a prayer requested by the Government.

Now there is also a possibility,—it is also the law, I would say—that under this indictment you can find the defendant guilty of manslaughter, and it is upon this theory of the case: If you believe that the deceased struck the defendant on the night of this homicide, and grabbed him in his private parts in the manner in which he has testified, and if you believe further that that aroused a sudden passion in him whereby he lost his self control, and that that provocation was such as was sufficient to arouse passion in an ordinary man under such circumstances, and that while under the influence of that passion he struck the blow which killed the deceased, then it would be within your power to bring in a verdict of guilty of manslaughter.

In other words the law, in its tenderness to human frailty, holds that if a man strikes a fatal blow, even under a sufficient provocation, under passion caused by a sufficient provocation, then his crime is reduced from intentional murder to manslaughter.

So that, if you believe from the testimony that this defendant was assaulted in the manner which he has detailed, and that
40 provocation was sufficient to cause him to lose control of himself and throw him into a sudden passion, and in that passion he struck the fatal blow, without malice, then you will find him guilty of manslaughter.

Upon this subject of the prior relations of the parties I give you this instruction on behalf of the Government.

"If you find from the evidence that the defendant had formed a purpose to kill the deceased if a certain event happened, and on the happening of that event he put his previously formed purpose into execution, then the crime is murder in the first degree, even though you do not find that the purpose to kill existed continuously from the time of its formation until its execution, unless you also find that before the killing he had abandoned such purpose."

So that, gentlemen, under this indictment, there are four possible verdicts that you might render. First, guilty of murder in the first degree, if you find that the killing was done premeditatedly and with deliberation, or with deliberate and premeditated malice. Second, murder in the second degree, if you find it was done with malice aforethought. Third, guilty of manslaughter, provided you find that it was done in the heat of passion and caused by an adequate legal provocation. And, fourth, it is within your power to bring in a verdict of not guilty.

Mr. O'SHEA: On the question of provocation, your Honor, I wish you would instruct the jury just a little more fully as to what that provocation means, if you will.

The COURT: As to manslaughter?

Mr. O'SHEA: Yes, sir.

41 The COURT: The law of manslaughter, so far as provocation bears upon it, is substantially as follows: As I say, it recognizes that a man may, under certain circumstances, so lose his self control as to even kill, without having malice in his heart, and

without being guilty of murder, when the act is caused by adequate provocation.

Now, such a provocation, so far as the purposes of this case are concerned, would exist if you believe that this defendant was struck by the deceased and grabbed by his testicles in the manner in which he has testified. If you believe that to have been the provocation under which he struck the fatal blow, then that would reduce the crime to manslaughter. Is that what you mean?

Mr. O'SHEA: Yes, sir; that is all, your Honor.

The COURT: That is the law, gentleman. And, as I have said before, the application of the rule of reasonable doubt applies not only to his guilt but to each degree of homicide which you may find him to be guilty of under the indictment. Of course your verdict will be announced, as you know, and you can select a foreman and return to the Court.

A JUROR: Your Honor, can we have that book of testimony?

The COURT: No, sir.

A JUROR: Your Honor, may I ask how long Court will remain?

The COURT: The Court will adjourn to be in touch with the jury for some time.

(The jury thereupon retired to consider of their verdict.)

42 And after the Court had charged the jury, and it had retired, it returned shortly and rendered its verdict.

All and every of the exceptions hereinbefore stated and taken were duly noted by the court on its minutes at the time that the same were severally noted and taken, and before the jury retired to consider of its verdict; and the defendant moves the court, to sign this his bill of exceptions to have the same force and effect as to each and every of the said exceptions as though the same were set forth in a separate bill of exceptions, which motion is granted; and the court accordingly signs this, the defendant's bill of exceptions to have the force and effect aforesaid, now for then, this 31st day of July, A. D. 1906.

ASHLEY M. GOULD, *Justice.*

Memoranda.

August 16, 1906.—Time to file transcript of record in Court of Appeals of the District of Columbia further extended to and including September 15, 1906.

September 14, 1906.—Time to file transcript of record in Court of Appeals further extended to September 22nd, 1906.

43 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 42, inclusive, to be a true and correct transcript of the record, as per Rule 5 of the Court of Appeals of the District of Columbia, in cause No. 25020, Criminal, United States *vs.* Charles E. Grant, otherwise

called Edward Grant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 16th day of August, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*
By ALF G. BUHMAN, *Ass't Cl'k.*

Endorsed on cover: District of Columbia supreme court. No. 1725. Charles E. Grant, &c., appellant, *vs.* United States. Court of Appeals, District of Columbia. Filed Sep. 19, 1906. Henry W. Hodges, clerk.